

Part 1

Cohabitant Abuse Act

78B-7-101 Title.

This part is known and may be cited as the "Cohabitant Abuse Act."

Enacted by Chapter 3, 2008 General Session

78B-7-102 Definitions.

As used in this chapter:

- (1) "Abuse" means intentionally or knowingly causing or attempting to cause a cohabitant physical harm or intentionally or knowingly placing a cohabitant in reasonable fear of imminent physical harm.
- (2) "Cohabitant" means an emancipated person pursuant to Section 15-2-1 or a person who is 16 years of age or older who:
 - (a) is or was a spouse of the other party;
 - (b) is or was living as if a spouse of the other party;
 - (c) is related by blood or marriage to the other party;
 - (d) has or had one or more children in common with the other party;
 - (e) is the biological parent of the other party's unborn child; or
 - (f) resides or has resided in the same residence as the other party.
- (3) Notwithstanding Subsection (2), "cohabitant" does not include:
 - (a) the relationship of natural parent, adoptive parent, or step-parent to a minor; or
 - (b) the relationship between natural, adoptive, step, or foster siblings who are under 18 years of age.
- (4) "Court clerk" means a district court clerk.
- (5) "Domestic violence" means the same as that term is defined in Section 77-36-1.
- (6) "Ex parte protective order" means an order issued without notice to the defendant in accordance with this chapter.
- (7) "Foreign protection order" is as defined in Section 78B-7-302.
- (8) "Law enforcement unit" or "law enforcement agency" means any public agency having general police power and charged with making arrests in connection with enforcement of the criminal statutes and ordinances of this state or any political subdivision.
- (9) "Peace officer" means those persons specified in Title 53, Chapter 13, Peace Officer Classifications.
- (10) "Protective order" means an order issued pursuant to this chapter subsequent to a hearing on the petition, of which the petitioner and respondent have been given notice in accordance with this chapter.

Amended by Chapter 348, 2013 General Session

78B-7-103 Abuse or danger of abuse -- Protective orders.

- (1) Any cohabitant who has been subjected to abuse or domestic violence, or to whom there is a substantial likelihood of abuse or domestic violence, may seek an ex parte protective order or a protective order in accordance with this chapter, whether or not that person has left the residence or the premises in an effort to avoid further abuse.

- (2) A petition for a protective order may be filed under this chapter regardless of whether an action for divorce between the parties is pending.
- (3) A petition seeking a protective order may not be withdrawn without approval of the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-7-104 Venue of action.

- (1) The district court has jurisdiction of any action brought under this chapter.
- (2) An action brought pursuant to this chapter shall be filed in the county where either party resides or in which the action complained of took place.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-7-105 Forms for petitions and protective orders -- Assistance.

- (1)
 - (a) The offices of the court clerk shall provide forms and nonlegal assistance to persons seeking to proceed under this chapter.
 - (b) The Administrative Office of the Courts shall develop and adopt uniform forms for petitions and orders for protection in accordance with the provisions of this chapter. That office shall provide the forms to the clerk of each court authorized to issue protective orders. The forms shall include:
 - (i) a statement notifying the petitioner for an ex parte protective order that knowing falsification of any statement or information provided for the purpose of obtaining a protective order may subject the petitioner to felony prosecution;
 - (ii) a separate portion of the form for those provisions, the violation of which is a criminal offense, and a separate portion for those provisions, the violation of which is a civil violation, as provided in Subsection 78B-7-106(5);
 - (iii) language in the criminal provision portion stating violation of any criminal provision is a class A misdemeanor, and language in the civil portion stating violation of or failure to comply with a civil provision is subject to contempt proceedings;
 - (iv) a space for information the petitioner is able to provide to facilitate identification of the respondent, such as social security number, driver license number, date of birth, address, telephone number, and physical description;
 - (v) a space for the petitioner to request a specific period of time for the civil provisions to be in effect, not to exceed 150 days, unless the petitioner provides in writing the reason for the requested extension of the length of time beyond 150 days;
 - (vi) a statement advising the petitioner that when a minor child is included in an ex parte protective order or a protective order, as part of either the criminal or the civil portion of the order, the petitioner may provide a copy of the order to the principal of the school where the child attends; and
 - (vii) a statement advising the petitioner that if the respondent fails to return custody of a minor child to the petitioner as ordered in a protective order, the petitioner may obtain from the court a writ of assistance.
- (2) If the person seeking to proceed under this chapter is not represented by an attorney, it is the responsibility of the court clerk's office to provide:
 - (a) the forms adopted pursuant to Subsection (1);
 - (b) all other forms required to petition for an order for protection including, but not limited to, forms for service;

- (c) clerical assistance in filling out the forms and filing the petition, in accordance with Subsection (1)(a). A court clerk's office may designate any other entity, agency, or person to provide that service, but the court clerk's office is responsible to see that the service is provided;
 - (d) information regarding the means available for the service of process;
 - (e) a list of legal service organizations that may represent the petitioner in an action brought under this chapter, together with the telephone numbers of those organizations; and
 - (f) written information regarding the procedure for transporting a jailed or imprisoned respondent to the protective order hearing, including an explanation of the use of transportation order forms when necessary.
- (3) No charges may be imposed by a court clerk, constable, or law enforcement agency for:
- (a) filing a petition under this chapter;
 - (b) obtaining an ex parte protective order;
 - (c) obtaining copies, either certified or not certified, necessary for service or delivery to law enforcement officials; or
 - (d) fees for service of a petition, ex parte protective order, or protective order.
- (4) A petition for an order of protection shall be in writing and verified.
- (5)
- (a) All orders for protection shall be issued in the form adopted by the Administrative Office of the Courts pursuant to Subsection (1).
 - (b) Each protective order issued, except orders issued ex parte, shall include the following language:

"Respondent was afforded both notice and opportunity to be heard in the hearing that gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322, 108 Stat. 1796, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of Columbia, tribal lands, and United States territories. This order complies with the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act."
 - (c) Each protective order issued in accordance with this part, including protective orders issued ex parte, shall include the following language:

"NOTICE TO PETITIONER: The court may amend or dismiss a protective order after one year if it finds that the basis for the issuance of the protective order no longer exists and the petitioner has repeatedly acted in contravention of the protective order provisions to intentionally or knowingly induce the respondent to violate the protective order, demonstrating to the court that the petitioner no longer has a reasonable fear of the respondent."

Amended by Chapter 232, 2009 General Session

78B-7-106 Protective orders -- Ex parte protective orders -- Modification of orders -- Service of process -- Duties of the court.

- (1) If it appears from a petition for an order for protection or a petition to modify an order for protection that domestic violence or abuse has occurred or a modification of an order for protection is required, a court may:
 - (a) without notice, immediately issue an order for protection ex parte or modify an order for protection ex parte as it considers necessary to protect the petitioner and all parties named to be protected in the petition; or
 - (b) upon notice, issue an order for protection or modify an order after a hearing, whether or not the respondent appears.
- (2) A court may grant the following relief without notice in an order for protection or a modification issued ex parte:

- (a) enjoin the respondent from threatening to commit or committing domestic violence or abuse against the petitioner and any designated family or household member;
 - (b) prohibit the respondent from harassing, telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly;
 - (c) order that the respondent is excluded from the petitioner's residence and its premises, and order the respondent to stay away from the residence, school, or place of employment of the petitioner, and the premises of any of these, or any specified place frequented by the petitioner and any designated family or household member;
 - (d) upon finding that the respondent's use or possession of a weapon may pose a serious threat of harm to the petitioner, prohibit the respondent from purchasing, using, or possessing a firearm or other weapon specified by the court;
 - (e) order possession and use of an automobile and other essential personal effects, and direct the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to possession of the residence, automobile, and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;
 - (f) grant to the petitioner temporary custody of any minor children of the parties;
 - (g) order the appointment of an attorney guardian ad litem under Sections 78A-2-703 and 78A-6-902;
 - (h) order any further relief that the court considers necessary to provide for the safety and welfare of the petitioner and any designated family or household member; and
 - (i) if the petition requests child support or spousal support, at the hearing on the petition order both parties to provide verification of current income, including year-to-date pay stubs or employer statements of year-to-date or other period of earnings, as specified by the court, and complete copies of tax returns from at least the most recent year.
- (3) A court may grant the following relief in an order for protection or a modification of an order after notice and hearing, whether or not the respondent appears:
- (a) grant the relief described in Subsection (2); and
 - (b) specify arrangements for parent-time of any minor child by the respondent and require supervision of that parent-time by a third party or deny parent-time if necessary to protect the safety of the petitioner or child.
- (4) Following the protective order hearing, the court shall:
- (a) as soon as possible, deliver the order to the county sheriff for service of process;
 - (b) make reasonable efforts to ensure that the order for protection is understood by the petitioner, and the respondent, if present;
 - (c) transmit electronically, by the end of the next business day after the order is issued, a copy of the order for protection to the local law enforcement agency or agencies designated by the petitioner; and
 - (d) transmit a copy of the order to the statewide domestic violence network described in Section 78B-7-113.
- (5)
- (a) Each protective order shall include two separate portions, one for provisions, the violation of which are criminal offenses, and one for provisions, the violation of which are civil violations, as follows:
 - (i) criminal offenses are those under Subsections (2)(a) through (e), and under Subsection (3)(a) as it refers to Subsections (2)(a) through (e); and
 - (ii) civil offenses are those under Subsections (2)(f), (h), and (i), and Subsection (3)(a) as it refers to Subsections (2)(f), (h), and (i).

- (b) The criminal provision portion shall include a statement that violation of any criminal provision is a class A misdemeanor.
- (c) The civil provision portion shall include a notice that violation of or failure to comply with a civil provision is subject to contempt proceedings.
- (6) The protective order shall include:
 - (a) a designation of a specific date, determined by the court, when the civil portion of the protective order either expires or is scheduled for review by the court, which date may not exceed 150 days after the date the order is issued, unless the court indicates on the record the reason for setting a date beyond 150 days;
 - (b) information the petitioner is able to provide to facilitate identification of the respondent, such as Social Security number, driver license number, date of birth, address, telephone number, and physical description; and
 - (c) a statement advising the petitioner that:
 - (i) after two years from the date of issuance of the protective order, a hearing may be held to dismiss the criminal portion of the protective order;
 - (ii) the petitioner should, within the 30 days prior to the end of the two-year period, advise the court of the petitioner's current address for notice of any hearing; and
 - (iii) the address provided by the petitioner will not be made available to the respondent.
- (7) Child support and spouse support orders issued as part of a protective order are subject to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non IV-D Cases, except when the protective order is issued ex parte.
- (8)
 - (a) The county sheriff that receives the order from the court, pursuant to Subsection (5)(a), shall provide expedited service for orders for protection issued in accordance with this chapter, and shall transmit verification of service of process, when the order has been served, to the statewide domestic violence network described in Section 78B-7-113.
 - (b) This section does not prohibit any law enforcement agency from providing service of process if that law enforcement agency:
 - (i) has contact with the respondent and service by that law enforcement agency is possible; or
 - (ii) determines that under the circumstances, providing service of process on the respondent is in the best interests of the petitioner.
- (9)
 - (a) When an order is served on a respondent in a jail or other holding facility, the law enforcement agency managing the facility shall make a reasonable effort to provide notice to the petitioner at the time the respondent is released from incarceration.
 - (b) Notification of the petitioner shall consist of a good faith reasonable effort to provide notification, including mailing a copy of the notification to the last-known address of the victim.
- (10) A court may modify or vacate an order of protection or any provisions in the order after notice and hearing, except that the criminal provisions of a protective order may not be vacated within two years of issuance unless the petitioner:
 - (a) is personally served with notice of the hearing as provided in Rules 4 and 5, Utah Rules of Civil Procedure, and the petitioner personally appears before the court and gives specific consent to the vacation of the criminal provisions of the protective order; or
 - (b) submits a verified affidavit, stating agreement to the vacation of the criminal provisions of the protective order.
- (11) A protective order may be modified without a showing of substantial and material change in circumstances.

- (12) Insofar as the provisions of this chapter are more specific than the Utah Rules of Civil Procedure, regarding protective orders, the provisions of this chapter govern.

Amended by Chapter 267, 2014 General Session

78B-7-107 Hearings on ex parte orders.

- (1)
- (a) When a court issues an ex parte protective order the court shall set a date for a hearing on the petition within 20 days after the ex parte order is issued.
 - (b) If at that hearing the court does not issue a protective order, the ex parte protective order shall expire, unless it is otherwise extended by the court. Extensions beyond the 20-day period may not be granted unless:
 - (i) the petitioner is unable to be present at the hearing;
 - (ii) the respondent has not been served;
 - (iii) the respondent has had the opportunity to present a defense at the hearing;
 - (iv) the respondent requests that the ex parte order be extended; or
 - (v) exigent circumstances exist.
 - (c) Under no circumstances may an ex parte order be extended beyond 180 days from the date of initial issuance.
 - (d) If at that hearing the court issues a protective order, the ex parte protective order remains in effect until service of process of the protective order is completed.
 - (e) A protective order issued after notice and a hearing is effective until further order of the court.
 - (f) If the hearing on the petition is heard by a commissioner, either the petitioner or respondent may file an objection within 10 days of the entry of the recommended order and the assigned judge shall hold a hearing within 20 days of the filing of the objection.
- (2) Upon a hearing under this section, the court may grant any of the relief described in Section 78B-7-106.
- (3) When a court denies a petition for an ex parte protective order or a petition to modify an order for protection ex parte, upon the request of the petitioner, the court shall set the matter for hearing and notify the petitioner and serve the respondent.
- (4) A respondent who has been served with an ex parte protective order may seek to vacate the ex parte protective order prior to the hearing scheduled pursuant to Subsection (1)(a) by filing a verified motion to vacate. The respondent's verified motion to vacate and a notice of hearing on that motion shall be personally served on the petitioner at least two days prior to the hearing on the motion to vacate.

Amended by Chapter 34, 2010 General Session

78B-7-108 Mutual protective orders prohibited.

- (1) A court may not grant a mutual order or mutual orders for protection to opposing parties, unless each party:
- (a) has filed an independent petition against the other for a protective order, and both petitions have been served;
 - (b) makes a showing at a due process protective order hearing of abuse or domestic violence committed by the other party; and
 - (c) demonstrates the abuse or domestic violence did not occur in self-defense.
- (2) If the court issues mutual protective orders, the circumstances justifying those orders shall be documented in the case file.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-7-109 Continuing duty to inform court of other proceedings -- Effect of other proceedings.

- (1) At any hearing in a proceeding to obtain an order for protection, each party has a continuing duty to inform the court of each proceeding for an order for protection, any civil litigation, each proceeding in juvenile court, and each criminal case involving either party, including the case name, the file number, and the county and state of the proceeding, if that information is known by the party.
- (2)
 - (a) An order for protection issued pursuant to this chapter is in addition to and not in lieu of any other available civil or criminal proceeding.
 - (b) A petitioner is not barred from seeking a protective order because of other pending proceedings.
 - (c) A court may not delay granting relief under this chapter because of the existence of a pending civil action between the parties.
- (3) A petitioner may omit his or her address from all documents filed with the court under this chapter, but shall separately provide the court with a mailing address that is not to be made part of the public record, but that may be provided to a peace officer or entity for service of process.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-7-110 No denial of relief solely because of lapse of time.

The court may not deny a petitioner relief requested pursuant to this chapter solely because of a lapse of time between an act of domestic violence or abuse and the filing of the petition for an order of protection.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-7-111 Prohibition of court-ordered or court-referred mediation.

In any case brought under the provisions of this chapter, the court may not order the parties into mediation for resolution of the issues in a petition for an order for protection.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-7-112 Division of Child and Family Services -- Development and assistance of volunteer network.

- (1) The Division of Child and Family Services within the Department of Human Services shall, either directly or by contract:
 - (a) develop a statewide network of volunteers and community resources to support, assist, and advocate on behalf of victims of domestic violence;
 - (b) train volunteers to provide clerical assistance to persons seeking orders for protection under this chapter;
 - (c) coordinate the provision of volunteer services with Utah Legal Services and the Legal Aid Society; and
 - (d) assist local government officials in establishing community based support systems for victims of domestic violence.

- (2) Volunteers shall provide additional nonlegal assistance to victims of domestic violence, including providing information on the location and availability of shelters and other community resources.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-7-113 Statewide domestic violence network -- Peace officers' duties -- Prevention of abuse in absence of order -- Limitation of liability.

- (1)
 - (a) Law enforcement units, the Department of Public Safety, and the Administrative Office of the Courts shall utilize statewide procedures to ensure that peace officers at the scene of an alleged violation of a protective order or pretrial criminal no contact order have immediate access to information necessary to verify the existence and terms of that order, and other orders of the court required to be made available on the network by the provisions of this chapter, Title 77, Chapter 36, Cohabitant Abuse Procedures Act, or Section 77-38-3. Those officers shall use every reasonable means to enforce the court's order, in accordance with the requirements and procedures of this chapter, Title 77, Chapter 36, Cohabitant Abuse Procedures Act, and Section 77-38-3.
 - (b) The Administrative Office of the Courts, in cooperation with the Department of Public Safety and the Criminal Investigations and Technical Services Division, established in Section 53-10-103, shall provide for a single, statewide network containing:
 - (i) all orders for protection issued by a court of this state; and
 - (ii) all other court orders or reports of court action that are required to be available on the network under this chapter, Title 77, Chapter 36, Cohabitant Abuse Procedures Act, and Section 77-38-3.
 - (c) The entities described in Subsection (1)(b) may utilize the same mechanism as the statewide warrant system, described in Section 53-10-208.
 - (d) All orders and reports required to be available on the network shall be available within 24 hours after court action. If the court that issued the order is not part of the state court computer system, the orders and reports shall be available on the network within 72 hours.
 - (e) The information contained in the network shall be available to a court, law enforcement officer, or agency upon request.
- (2) When any peace officer has reason to believe a cohabitant or child of a cohabitant is being abused, or that there is a substantial likelihood of immediate danger of abuse, although no protective order has been issued, that officer shall use all reasonable means to prevent the abuse, including:
 - (a) remaining on the scene as long as it reasonably appears there would otherwise be danger of abuse;
 - (b) making arrangements for the victim to obtain emergency medical treatment;
 - (c) making arrangements for the victim to obtain emergency housing or shelter care;
 - (d) explaining to the victim his or her rights in these matters;
 - (e) asking the victim to sign a written statement describing the incident of abuse; or
 - (f) arresting and taking into physical custody the abuser in accordance with the provisions of Title 77, Chapter 36, Cohabitant Abuse Procedures Act.
- (3) No person or institution may be held criminally or civilly liable for the performance of, or failure to perform, any duty established by this chapter, so long as that person acted in good faith and without malice.

Amended by Chapter 196, 2013 General Session

78B-7-114 Authority to prosecute class A misdemeanor violations.

Alleged class A misdemeanor violations of this chapter may be prosecuted by city attorneys.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-7-115 Dismissal of protective order.

- (1) Except as provided in Subsection (6), a protective order that has been in effect for at least two years may be dismissed if the court determines that the petitioner no longer has a reasonable fear of future abuse. In determining whether the petitioner no longer has a reasonable fear of future abuse, the court shall consider the following factors:
 - (a) whether the respondent has complied with treatment recommendations related to domestic violence, entered at the time the protective order was entered;
 - (b) whether the protective order was violated during the time it was in force;
 - (c) claims of harassment, abuse, or violence by either party during the time the protective order was in force;
 - (d) counseling or therapy undertaken by either party;
 - (e) impact on the well-being of any minor children of the parties, if relevant; and
 - (f) any other factors the court considers relevant to the case before it.
- (2) Except as provided in Subsection (6), the court may amend or dismiss a protective order issued in accordance with this part that has been in effect for at least one year if it finds that:
 - (a) the basis for the issuance of the protective order no longer exists;
 - (b) the petitioner has repeatedly acted in contravention of the protective order provisions to intentionally or knowingly induce the respondent to violate the protective order;
 - (c) the petitioner's actions demonstrate that the petitioner no longer has a reasonable fear of the respondent; and
 - (d) the respondent has not been convicted of a protective order violation or any crime of violence subsequent to the issuance of the protective order, and there are no unresolved charges involving violent conduct still on file with the court.
- (3) The court shall enter sanctions against either party if the court determines that either party acted:
 - (a) in bad faith; or
 - (b) with intent to harass or intimidate either party.
- (4) Notice of a motion to dismiss a protective order shall be made by personal service on the petitioner in a protective order action as provided in Rules 4 and 5, Utah Rules of Civil Procedure.
- (5) If a divorce proceeding is pending between parties to a protective order action, the protective order shall be dismissed when the court issues a decree of divorce for the parties if:
 - (a) the petitioner in the protective order action is present or has been given notice in both the divorce and protective order action of the hearing; and
 - (b) the court specifically finds that the order need not continue, and as provided in Subsection (1), the petitioner no longer has a reasonable fear of future abuse.
- (6)
 - (a) Notwithstanding Subsection (1) or (2), a protective order that has been entered under this chapter concerning a petitioner and a respondent who are divorced shall automatically expire, subject to Subsections (6)(b) and (c), 10 years from the day on which one of the following occurs:

- (i) the decree of divorce between the petitioner and respondent became absolute; or
 - (ii) the protective order was entered.
 - (b) The protective order shall automatically expire, as described in Subsection (6)(a), unless:
 - (i) the petitioner demonstrates that the petitioner has a reasonable fear of future abuse, as described in Subsection (1); or
 - (ii) the respondent has been convicted of a protective order violation or any crime of violence subsequent to the issuance of the protective order.
 - (c) The 10 years described in Subsection (6)(a) is tolled for any period of time that the respondent is incarcerated.
- (7) When the court dismisses a protective order, the court shall immediately:
- (a) issue an order of dismissal to be filed in the protective order action; and
 - (b) transmit a copy of the order of dismissal to the statewide domestic violence network as described in Section 78B-7-113.

Amended by Chapter 196, 2016 General Session

78B-7-116 Full faith and credit for foreign protection orders.

- (1) A foreign protection order is enforceable in this state as provided in Title 78B, Chapter 7, Part 3, Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.
- (2)
- (a) A person entitled to protection under a foreign protection order may file the order in any district court by filing with the court a certified copy of the order. A filing fee may not be required.
 - (b) The person filing the foreign protection order shall swear under oath in an affidavit, that to the best of the person's knowledge the order is presently in effect as written and the respondent was personally served with a copy of the order.
 - (c) The affidavit described in Subsection (2)(b) shall be in the form adopted by the Administrative Office of the Courts, consistent with its responsibilities to develop and adopt forms under Section 78B-7-105.
 - (d) The court where a foreign protection order is filed shall transmit a copy of the order to the statewide domestic violence network described in Section 78B-7-113.
 - (e) Upon inquiry by a law enforcement agency, the clerk of the district court shall make a copy of the foreign protection order available.
 - (f) After a foreign protection order is filed, the district court shall furnish a certified copy of the order to the person who filed the order.
 - (g) A filed foreign protection order that is inaccurate or is not currently in effect shall be corrected or removed from the statewide domestic violence network described in Section 78B-7-113.
- (3) Law enforcement personnel may:
- (a) rely upon a certified copy of any foreign protection order which has been provided to the peace officer by any source;
 - (b) rely on the statement of the person protected by the order that the order is in effect and the respondent was personally served with a copy of the order; or
 - (c) consider other information in determining whether there is probable cause to believe that a valid foreign protection order exists.
- (4) A violation in Utah of a foreign protection order is subject to the same penalties as the violation of a protective order issued in Utah.

Renumbered and Amended by Chapter 3, 2008 General Session

